IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1115 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAYKUMAR MARTANDRAO NIMBARKAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr K G Sheth, AAGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/04/2001

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ order or direction for quashing and setting aside an order dated 29.8.2000 passed by the

Commissioner of Police, Vadodara City, exercising powers and jurisdiction under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the Act') finding the petitioner to be a dangerous person and holding that his activities are detrimental to the society at large and there is likelihood of breach of public order and, therefore, he was required to be detained as aforesaid. Accordingly the aforesaid order of detention was passed and the petitioner was actually detained in pursuance of the above order.

2. Feeling aggrieved by the said order of detention the petitioner has preferred this petition before this court challenging the said order stating that there is total non-application of mind on the part of the detaining authority inasmuch as the statement of witnesses were recorded by the Police Inspector, Anti-social Squad on 25.8.2000 and they were verified by the detaining authority on 28.8.2000 and thereafter, the detention order was passed by the detaining authority on 29.8.2000. It is, therefore, submitted on the aforesaid facts that the detaining authority did not apply its mind to the papers made available to him and the statements of witnesses were not properly verified in accordance with the requirement of law and, therefore, on account of non-application of mind, the order stand vitiated. It is, therefore, prayed that the present application be allowed, the order of detention passed against the present petitioner dated 29.8.2000! be quashed and set aside and the petitioner be set at liberty forthwith.

3. On receipt of the petition, rule was issued and Mr K G Sheth, learned AGP appears on behalf of the respondents. I have heard Mrs Subhadra Patel, learned Advocate for the petitioner and Mr K G Sheth, learned AGP for the State and have perused the papers. Learned Advocate for the petitioner has argued that the Police Inspector, Anti-Social Squad has recorded statement of witnesses on 25.8.2000 and all statements were verified by the detaining authority on 28.8.2000 and the order of detention was passed on 29.8.2000. That there was absolutely no time gap between the date of recording of statements and the date of verification of statements and date of order of detention passed against the petitioner and, therefore, there is a case of non-application of mind by the detaining authority and therefore, the entire exercise cannot be treated to be true and genuine and, therefore, the order passed against the petitioner would stand vitiated. On the other hand, there is no material to show that the statements were really verified in

accordance with the requirement of law. In this connection, we can refer to a decision in the case of Kalidas Kahar v. State, reported in 1993 (2) GLR 1659. In para 6 of the said judgment, it has been observed as follows:

> "His second contention is that the detaining authority has wrongly exercised the powers under section 9(2) of the PASA Act and by such wrong exercise of powers the detenu, right to make a representation under Article 22(5) of the Constitution has been infringed. He further elaborates his submission by pointing out that the statements of the witnesses have been recorded on 16th October, 1992 and that the said statements have been verified by the Superintendent of Police, C Division, Baroda City on 16th October, 1992. It has been pointed out by the learned AGP Mr Y M Thakkar that the proposal in the case was made on 16th October, 1992 and the order of detention was passed on 17th October, 1992. It is rather curious that the entire bunch of material was supplied by the sponsoring authority at the time of making the proposal and that has been promptly accepted by the detaining authority and passed the order on the next day itself. At the time of exercising the privilege under section 9(2) of PASA, the balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. as against this there is a provision under section 9(2) craved out on the basis of Article 22(5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to

> disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9(2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinabove, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9(2) as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day, i.e. on 17th October, 1992, nor is there any material to show as to how he examined the necessity of exercising the power under section 9(2). Under the circumstances, in our view, it is a wrong exercise of power under sec. 9(2) which has affected the detenu's right of making as effective representation under Article 22(5) of the Constitution of India and therefore, the illegal and the impugned detention order is required to be quashed and set aside."

In the aforesaid decision, it is clear that looking to the time lag between the date of recording of statements, the date of verification of statements and the date on which the detention order was passed, it is noticed that there was no time lag. Therefore, it can be said that mind has not been properly applied to the statements made by the witnesses. Once it is found that the case is without proper application of mind, it is absolutely clear that the order of detention stands vitiated.

5. In the above view of the matter, I am of the view that this is a case in which it is not shown that there was proper application of mind. Therefore, the order of detention cannot be sustained and is required to be quashed and set aside. Consequently, the present petition is ordered to be allowed and the order of detention passed on 29.8.2000 against the present detenu by the Police Commissioner, Vadodara City is quashed and set aside. The detenu is ordered to be set at liberty, if not required in any other case. Rule is made absolute. Direct Service is permitted.

20.4.2001 [D P Buch, J.]
msp